

IN THE COURT OF APPEALS  
AT KNOXVILLE

**FILED**

March 31, 2000

Cecil Crowson, Jr.  
Appellate Court Clerk

HARRISON M. X. PEARISON, JR.        ) HAMILTON COUNTY  
  ) E1999-2339-COA-R3-CV  
Plaintiff-Appellant                    )  
  )  
v.   ) HON. JACQUELINE E. SCHULTEN,  
  ) JUDGE  
  )  
PAULETTE MASON FOSSIS PEARISON     )  
  )  
Defendant-Appellee                    ) VACATED AND REMANDED

HARRISON M. X. PEARISON, JR., Appellant, pro se

NO BRIEF FILED BY THE APPELLEE

O P I N I O N

Goddard, P.J.

Harrison M. X. Pearson, Jr., has filed a post-divorce  
complaint seeking to have the decree granting a divorce to the

parties changed to an annulment on the ground that Ms. Pearison had never been divorced from a prior husband, Earl Fossis.

Mr. Pearison is an inmate incarcerated in the penal system of Tennessee and at the hearing as to his original complaint his brother attempted to represent him. The Trial Court, upon learning the brother was not an attorney, entered an order providing the following:

This cause came to be heard this the 20<sup>th</sup> day of April, 1998, before the Honorable Robert M. Summitt, Judge of Division One of the Circuit Court of Hamilton County, Tennessee upon the Petition to Change Divorce to Annulment and upon the appearance of Sammy R. Pearison and Attorney Philip L. Duval. It appearing to the Court that the Petition has been filed by Sammy R. Pearison, brother of the Petitioner, that Sammy R. Pearison is not an attorney, and that the Petition is not Pro Se as alleged, it is hereby

**ORDERED** that the Petitioner be allowed thirty (30) days from the entry of this Order to secure representation by licensed counsel. It is further

**ORDERED** that if the Petitioner does not retain counsel as ordered the Petition will stand dismissed with costs taxed against the Petitioner.

Another complaint was filed wherein Mr. Pearison purported to represent himself. This complaint is stamped filed by the Clerk's office on May 12, 1999.

Mr. Pearison's appellate brief concedes that to be timely his complaint must have been filed within one year after dismissal of his earlier complaint. He argues, however, that the effective date of the dismissal was 30 days subsequent to the May 5<sup>th</sup> order when he did not comply with the condition imposed by the Trial Court. Secondly, he argues, and has filed an affidavit with his brief, that pursuant to Rule 5.06 of the Tennessee Rules of Civil Procedure, he filed his complaint in the "institutional mailbox. . . . on or about the 25<sup>th</sup> day of March, 1999."

This Court, of course, cannot consider the affidavit as it is not a part of the record. We do note, however, the record discloses that Mr. Pearison dated the second petition March 25, 1999, and that his signature is verified by a notary public as of that date. We think it may be reasonably inferred that this petition, in accordance with Rule 5.6, was "delivered to the

appropriate individual at the correction facility" shortly after it was executed, and certainly before May 5, 1999.

We accordingly believe it appropriate, in light of the inference to be drawn from the present record, that the dismissal be vacated and the case be remanded to the Trial Court so that inquiry may be made as to the date the second petition was filed, and--if timely--for consideration of the merits of the case. Costs of appeal are adjudged against Ms. Pearison.

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Houston M. Goddard, P.J.

CONCUR:

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Herschel P. Franks, J.

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Charles D. Susano, Jr., J.